

March 9, 1953  
Opinion No. 53-45

TO: The Honorable Hubert H. Gray,  
Arizona State Senator  
RE: Office Memorandum to Ross D. Johnson  
concerning the below-detailed question.  
QUESTION: Whether the Santa Cruz County  
Fair and Rodeo Association, Inc.  
may qualify for county and state  
funds.

The initial question which is always raised when private organizations seek public funds is whether the state or county may constitutionally grant such funds. The Arizona Constitution, Article 9, Section 7, provides:

"(Loss of public credit.) -- Neither the state, nor any county, city, town, municipality, or other subdivision of the state shall ever give or loan its credit in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or become a joint owner with any person, company, or corporation, except as to such ownerships as may accrue to the state by operation or provision of law."

In the case of SOUTH SIDE DISTRICT HOSPITAL v. HARTMAN, (1944) 62 Ariz. 67, this constitutional provision was discussed pertaining to a lease by the City of Mesa to the South Side District Hospital, a non-profit corporation, of lands belonging to the City for a nominal rental of \$1.00 a year. In upholding the constitutionality of the lease the Court found that the hospital was formed for a public purpose; that the South Side District Hospital was an agent of the City operating the hospital on a non-profit basis; that the income derived from the operation of the hospital belonged to the City and not to the hospital and that the entire net income of the hospital had been devoted to necessary additions and improvements to the hospital and such improvements would become the property of the City.

The Santa Cruz County Fair and Rodeo Association, Inc., could qualify for county and state aid under Sections 17-1202 and 73-1916, A.C.A. 1939, if it met the requisites laid down in the South Side District Hospital case, supra. First and foremost its purpose must be of a public nature which would entail the

Hon. Hubert Merryweather  
Arizona State Senator

March 9, 1953  
Page Two

commercial, industrial and social interests of the public at large in Santa Cruz County. Secondly, the corporation must be operated on a non-profit basis and no dividends paid on any stock issued; and, thirdly, an agreement must be entered into whereby the Association operated the fair for the County and public funds expended in behalf of the fair would be expended on behalf of the City or State and not on behalf of the Association. If the Association met the above conditions, the similarity of the fact situation with the South Side District Hospital case would take the expenditure of such funds without the prohibition contained in Article 9, Section 7, of the Constitution.

Under Subsection 25, of Section 17-309, A.C.A. 1939, the power of the board of supervisors to conduct public fairs is set out. Whereas it is axiomatic that the discretionary powers of the board may not be delegated, INDUSTRIAL COMMISSION v. NAVAJO COUNTY, (1946) 64 Ariz. 172, this does not preclude a county from contracting for the services of a private fair association so long as the supervision over the conduct, management and control of such fair association remains with the board of supervisors. This control or arrangement must be that of principal and agent as opposed to principal and independent contractor, SOUTH SIDE DISTRICT HOSPITAL v. HARTMAN, supra. It must be borne in mind at all times that a fair conducted under these circumstances must be in fact a county fair conducted for the benefit of all of the citizens of Santa Cruz County.

In summary, therefore, if the Santa Cruz County Fair and Rodeo Association meets the conditions prescribed in the case of SOUTH SIDE DISTRICT HOSPITAL v. HARTMAN, supra, and further, if a contract is entered into between the County and the Association with the foregoing limitations incorporated therein, funds could be expended in aid of such fair under Section 17-1202 and Section 73-1619, A.C.A. 1939, as amended.

ROSS F. JONES  
The Attorney General

THADDEUS G. BAKER  
Assistant to the  
Attorney General

53-45